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10/710,306	07/01/2004	Michael H. Bertucci	JD-327A	4305

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EXAMINER

GANEY, STEVEN J

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/710,306

Applicant(s)

BERTUCCI ET AL.

Examiner

Steven J. Ganey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☒ Claim(s) 27 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/8/04 & 5/5/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: The specification does not adequately describe what the first support member and second support member are defined to be and which element numerals correspond to them. On page 5, paragraph 29, line 6, the phrase --providing a first support member-- should be inserted after the phrase “as well as cavities 18”. On page 5, paragraph 29, lines 10 and 11, the phrase --providing a second support member-- should be inserted after the phrase “foot portions 25 and 27”. This change should be done since it is each foot portion 25/27 that provides support/holds the container (i.e. a second support member) and since claims 8, 18 and 25 further recite two second support members. The specification does not adequately describe what the first portion and second portion are defined to be and which element numerals correspond to them. On page 6, paragraph 30, line 2, the word --second-- should be inserted before the phrase “portion 42”. On page 6, paragraph 30, line 3, the phrase “the vertical portion 46” should be changed to --a vertical first portion 46--. On page 7, line 1, the phrase “the additional support member 60A” should be changed to --an additional third support member 60A--, in order to adequately describe in the specification what the third support member is defined to be and which element corresponds to it. Appropriate correction is required.

*Claim Objections*

2. Claims 1-3, 5, 6, 10-13, 15, 16 and 20-23 are objected to because of the following informalities: In claims 1 and 11 only “a first support member” and “a second support member” in a singular recitation are claimed, however, claims 4, 8, 14 and 18 further recite that there “two first support members” and “two seconds support members” in a plural recitation. This is inconsistent and confusing since claims 1 and 11 only indicate that one first support member and one second support member can be provided not one or more. Language such as --at least one first support member-- and --at least one second support member-- should be inserted in lines 3 and 5 of claim 1 and lines 4 and 6 of claim 11 instead of “a first support member” and “a second support member” respectively. In claims 1 and 11, lines 5 and 7, respectively, the phrase “the first and second support members” should be changed to --the at least one first and second support members--. In claims 2, 3, 5, 6, 12, 13, 15 and 16, the phrase --at least one-- should be inserted before every instance of the phrases “first support member” and “second support member”. In claim 5, line 2, the phrase “a dispenser nozzle therein” should be changed to --the nozzle portion of the dispensing device therein--, to be consistent with claim 1, lines 3 and 4. In claim 10, line 1, the numeral “1” should be changed to either --2-- or --5-- such that proper antecedent basis is given for “the cavity”. In claim 15, line 2, the phrase “a dispenser nozzle therein” should be changed to --the nozzle portion of the dispensing device therein--, to be consistent with claim 1, lines 3 and 4. In claim 20, line 1, the numeral “11” should be changed to either --12-- or --15-- such that proper antecedent basis is given for “the cavity”. In claim 21, only “a first support member”, “a second support member” and “a third support member” in a singular recitation are claimed, however, claim 25 further recites that there “two oppositely

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disposed first, second and third support members” in a plural recitation. This is inconsistent and confusing since claim 21 only indicates that one first support member, one second support member and one third support member can be provided not one or more. Language such as --at least one first support member--, --at least one second support member-- and --at least one third support member-- should be inserted in lines 3, 5 and 9 of claim 21 instead of “a first support member”, “a second support member” and “a third support member” respectively. In claim 21, lines 5 and 6, the phrase “the first and second support members” should be changed to --the at least one first and second support members--. ”. In claim 22, only “a side portion” in a singular recitation is claimed, however, claim 24 further recites that there “side portions” in a plural recitation. This is inconsistent and confusing since claim 22 only indicates that one side portion can be provided not one or more. Language such as --at least one side portion-- should be inserted in line 2 of claim 22 instead of “a side portion”. In claim 23, lines 1 and 2, the phrase “the side portion” should be changed to --the at least one side portion--. In claims 22, 23, 26 and 27, the phrase --at least one-- should be inserted before every instance of the phrases “first support member”, “second support member” and “third support member”. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 4, 8, 9, 18, 19, 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 4 and 14, line 2, the recitation of “two oppositely disposed first support members” lacks antecedent basis since only “a first support member” in singular recitation has been presented in claims 1 and 11, not one or more. Corrections as presented in paragraph 2 above should be done.

In claims 8 and 18, line 2, the recitation of “two oppositely disposed second support members” lacks antecedent basis since only “a second support member” in singular recitation has been presented in claims 1 and 11, not one or more. Corrections as presented in paragraph 2 above should be done.

In claim 24, lines 1 and 2, the recitation of “the side portions” lacks antecedent basis and is indefinite since only “a side portion” in singular recitation has been presented in claim 22, not one or more. Corrections as presented in paragraph 2 above should be done and the claim rewritten to indicate that the frame member has two side portions.

In claim 25, , the recitation of “two oppositely disposed first, second and third support members” lacks antecedent basis and is indefinite since only “a first support member”, “a second support member” and “a third support member” in singular recitation has been presented in claim 21, not one or more. Corrections as presented in paragraph 2 above should be done.

#### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or

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improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type

double patenting as being unpatentable over claims 1-20 of copending Application No.

10/707,533. Although the conflicting claims are not identical, they are not patentably distinct

from each other because they both claim an apparatus for supporting a handheld liquid

dispensing device, a combined hand held liquid dispensing device and apparatus for supporting

the device comprising the same claimed features, where the claims in the instant application are

merely broader in scope than claims 1-20 of copending Application No. 10/707,533 and are

encompassed in claims 1-20 of copending Application No. 10/707,533.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 5, 10-12, 15 and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Toetschinger et al '673.

Toetschinger et al '673 shows an apparatus comprising a first support member defined by a platform 235d and a cavity/passage 235e for receiving a nozzle portion 227 of a dispensing device 200; a second support member 208 for holding a container 201; a frame member including a third support member 202/203 and side portions 204/205 which angle inwardly at 90 degrees from the third support member towards the first support member; and supporting structure 206/207.

9. Claims 1, 2, 5, 8, 10-12, 15, 18 and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Decker et al.

Decker et al shows an apparatus comprising a first support member defined by a platform 12, a cavity 30/55 and passage 56/57 for receiving a nozzle portion 34 of a dispensing device 18; a plurality of second support members 15/44-47 and 17/44-47 for holding a container 22; a frame member comprising a first portion 21 and a second portion 13; and supporting structure 11.

As to claims 21-23, the frame member comprises all the above, however, the frame member includes a third support member 13 and backside portion 21 that angles inwardly from the third support member at an angle of 90 degrees towards the first support member 12.



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10. Claims 1, 4, 8, 9, 11, 14, 18, 19, 21, 22 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by US 2002/0148907.

US 2002/0148907 shows an apparatus comprising at least two oppositely disposed first support members 772; a liquid dispensing device 720; two oppositely disposed second support members 762/764 for holding containers, note that the first and second support members are in axial alignment; a frame member comprising a first rod portion 769 and a second rod portion 770; and supporting structure 761.

As to claims 21, 22 and 25, the frame member comprises all the above, however, the frame member includes two oppositely disposed third support members 766/768 and side portion 770 connected to the third support member.

11. Claims 1, 3, 4, 6, 8, 9, 21-23 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Tseng.

Tseng discloses an apparatus comprising a frame member defined by a first rod portion 32 extending in a first direction and second rod portion 31 extending at a right angle to the first portion and connected to a supporting structure 10; two oppositely disposed first support members 71, see the top two plate members of Fig. 4; and two oppositely disposed second support members 71, see third and fourth plate members from the top which are pivotally connected to the frame with a foot portion 72/720, note that the first and second support members are in axial alignment.

In regard to claim 21, note two oppositely disposed first support members 71, see the top two plate members of Fig. 4; a second support member 71, see third plate member from the top of Fig. 4, which is pivotally connected to the frame member with rods/units 72/720, note that the

first and second support members are in axial alignment; a third support member 71, see fourth plate from the top, Fig. 4; the frame member includes a side portion 31 connected to the third support member by the rods/units 72/720, wherein the side portion angles inwardly from the third support towards the first support at 90 degrees.

With respect to applicant's statements of intended use, i.e. (for supporting a hand held liquid dispensing device, for receiving a nozzle portion of the dispensing device and for holding a container), the device of Tseng is capable of performing applicant's intended use, therefore, the claims are fully anticipated. Note the plates 71 are capable of holding a hand held liquid dispensing device or the nozzle portion of it and a container.

12. Claims 1, 21 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Gantois.

Gantois discloses an apparatus comprising a frame member 10/13 connected to a supporting structure 15/16; a first support member 7; a second support member 3, note that the first and second support members are in axial alignment; and a third support member 38, where the frame member includes a side portion 32.

With respect to applicant's statements of intended use, i.e. (for supporting a hand held liquid dispensing device, for receiving a nozzle portion of the dispensing device and for holding a container), the device of Gantois is capable of performing applicant's intended use, therefore, the claims are fully anticipated. Note the holder 7 could receive a nozzle portion of the dispensing device and holder 3 could hold a container.

***Allowable Subject Matter***

13. Claim 27 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Claim 24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is 571-272-4899. The examiner can normally be reached on 7:00-5:00; M,Tu, W and Th.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on 571-272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steven J. Ganey  
Primary Examiner  
Art Unit 3752

sjg  
5/30/06

  
**STEVEN J. GANEY**  
**PRIMARY EXAMINER**  
5/30/06